

**DOCKET FOR REGULAR COUNCIL MEETING OF  
TUESDAY, FEBRUARY 13, 2001 AT 10:00 A.M.  
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**DOCKET FOR REGULAR COUNCIL MEETING OF  
TUESDAY, FEBRUARY 13, 2001 AT 10:00 A.M.  
CITY ADMINISTRATION BUILDING  
COUNCIL CHAMBERS - 12TH FLOOR  
202 "C" STREET  
SAN DIEGO, CA 92101**  
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**NOTE:** The public portion of the meeting will begin at 10:00 a.m. The City Council will meet in Closed Session this morning from 9:00 a.m. - 10:00 a.m. Copies of the Closed Session agenda are available in the Office of the City Clerk.

**OTHER LEGISLATIVE MEETINGS**

The **SAN DIEGO HOUSING AUTHORITY** is scheduled to meet today in the Council Chambers. A separate agenda is published for it, and is available in the Office of the City Clerk. For more information, please contact the Housing Authority Secretary at 525-3602.

ITEM-300:           ROLL CALL.

**NON-AGENDA PUBLIC COMMENT**

This portion of the agenda provides an opportunity for members of the public to address the Council on items of interest within the jurisdiction of the Council. (Comments relating to items on today's docket are to be taken at the time the item is heard.)

Time allotted to each speaker is determined by the Chair, however, comments are limited to no more than three (3) minutes **total per subject** regardless of the number of those wishing to speak. Submit requests to speak to the Mayor or the City Clerk **prior** to the start of the meeting. Pursuant to the Brown Act, no discussion or action, other than a referral, shall be taken by Council on any issue brought forth under "Non-Agenda Public Comment."

**COUNCIL COMMENT**

## **REQUEST FOR CONTINUANCE**

The Council will now consider requests to continue specific items.

## **ADOPTION AGENDA, HEARINGS**

### **NOTICED HEARINGS:**

ITEM-330: Public Right-of-Way Use Permit Procedures and Encroachment of Walls and Fences in the Public Right-of-Way.

(Continued from the meeting of January 23, 2001, Item 331, at the request of the City Manager, to reconcile issues regarding the Municipal Code and the Land Development Code.)

Matter of approving, conditionally approving, modifying or denying a proposed amendment to the Land Development Code to add a Section, "Public Right-of-Way Use Permit Procedures," and to amend the San Diego Municipal Code, Chapter 6, Encroachments.

(Districts-Citywide.)

**NOTE:** Hearing open. No testimony taken on 1/23/2001.

## **CITY MANAGER'S RECOMMENDATION:**

Introduce the following ordinances in Subitem A and Subitem B:

Subitem-A: (O-2001-20)

Introduction of an Ordinance amending Chapter 12, Article 6, of the San Diego Municipal Code by adding a new Division 9 titled "Public Right-of-Way Use Permit Procedures" and by adding new Sections 126.0901, 126.0902, 126.0903, 126.0904, 126.0905, 126.0906, and 126.0907, all relating to development permits.

Subitem-B: (O-2001-44 Cor. Copy)

Introduction of an Ordinance amending Chapter VI, Article 2, Division 3 of the San Diego Municipal Code by amending Sections 62.0301 and 62.0302 to permit the consideration of walls and fences in the public right-of-way.

## **COMMITTEE ACTION:**

Initiated by Land Use and Housing Committee on 9/20/2000, Item #4. Recommendation to

approve the City Manager's Report No. 00-190, which directed staff to take the draft ordinance to the Planning Commission for recommendation and to City Council for approval. Councilmembers Wear, Kehoe, Stevens and McCarty voted yea.

### **OTHER RECOMMENDATIONS:**

Planning Commission on October 19, 2000 voted 6 - 1 to recommend to the City Council that they approve the ordinance amending the Municipal Code to add the Section, "Public Right-of-Way Use Permit Procedures." The Planning Commission further recommended that staff process requests for Public Right-of-Way Use Permits as a Process Four decision to ensure adequate public notice and environmental review; no opposition.

Ayes: White, Stryker, Steele, Anderson, Brown, Butler  
Nays: Skorepa

The Code Monitoring Team considered the proposed Public Right-of-Way Use Permit Procedures on October 11, 2000. The Team voted 10-0 to recommend that the Public Right-of-Way Use Permit should be processed as a Process Four. The Team further recommended that the Public Right-of-Way Use Permit Procedures should entail the requirement that the applicant obtain the notarized permission of all property owners abutting the rights-of-way proposed for encroachment.

### **CITY MANAGER SUPPORTING INFORMATION:**

#### **BACKGROUND**

The City has received requests from several organizations to install monofilament wire over the public right-of-way to help establish boundaries to enclose areas of the City. The area enclosed by such a boundary would be known as an Eruv (Eruvin, plural). The Land Use and Housing Committee members were apprised of these requests and that the City Manager would develop a policy and approval process to address these requests, which would constitute encroachments.

The City currently has an encroachment approval process to enable property owners to place encroachments within the public right-of-way where they hold the underlying fee title. For the City to grant encroachments over public rights-of-ways dedicated over privately held properties not owned by an applicant, the San Diego Municipal Code would need to be amended.

#### **DISCUSSION**

##### **Public Right-of-Way Use Permit Procedures**

Encroachments within the public right-of-way are addressed under Section 62.0302 of the Municipal Code. However, the only encroachments authorized under this Section are those in which the applicant owns the underlying property. In such cases, an Encroachment Maintenance and Removal Agreement is recorded against the owner's property. This agreement binds the owner to maintain the encroachment in a safe and sanitary condition. It also binds the owner to indemnify the City from any liability arising from the encroachment.

The proposed amendment, Public Right-of-Way Use Permit Procedures would allow for encroachments where the applicant does not hold the underlying fee title. The draft ordinance, provides that the applicant for an encroachment, would be required to maintain the encroaching structure in a safe condition. The applicant would also have to indemnify the City from any liability arising from the encroachment. Staff recommends that the Public Right-of-Way Use Permit be processed as a Process Four level decision appealable to the City Council. The Code Monitoring Team (a Land Development Code update oversight committee) and the Planning Commission recommend that the permit be a Process Four level approval with a decision by the Planning Commission appealable to the City Council.

The proposed amendment does not supersede the provisions of other applicable regulations such as the San Diego Municipal Code Section 61.0509 (Prohibition of Poles and Wires in Underground Utility Districts) nor franchise agreements. Pursuant to the proposed ordinance, an applicant for a Public Right-of-Way Permit will still be required to comply with all applicable laws and regulations.

The Public Right-of-Way Use Permit would provide City staff greater options in dealing with encroachment requests. In addition to the Eruvin requests, the following encroachments would be possible:

- sewer and water laterals
- private bus shelters
- non-franchise phone booths
- private mail collection boxes

#### Encroachment of Walls and Fences in the Public Right-of-Way

Encroachment permits are addressed under Sections 62.0301 and 62.0302 of the Municipal Code. They provide the authority to grant encroachment permits with the attendant requirements. This permit is in the form of an Encroachment Maintenance and Removal Agreement, which is recorded against the owner's property. This agreement binds the owner to maintain the encroachment in a safe and sanitary condition. It also binds the owner to indemnify the City from any liability arising from the encroachment. Section 62.0301 states that an encroachment permit shall not be granted for walls and fences.

There may arise situations where it is desirable for a property owner to have a wall or fence in the public right-of-way to maintain privacy for the enjoyment or use of the property. The only feasible engineering solution for the desired barrier may entail the encroachment of some portion of a wall into the public right-of-way. For example, a retaining wall footing may encroach in the public right-of-way. With the removal of the prohibition cited in Chapter 6 of the Municipal Code, staff will review the proposed encroachment and notify those in the vicinity. Staff will make a decision on the encroachment based on their findings. This decision will be appealable to the Planning Commission.

The proposed amendment to Section 62.0301 of the Municipal Code to remove the prohibition against granting encroachments for walls and fences in the public right-of-way, will make the section consistent with the more recently adopted Land Development Code. Chapter 12 and 14 of the Municipal Code provide that the encroachment of walls and fences may be considered. Moreover, it will provide for the review process (Process Two) for the granting of such encroachments.

## CONCLUSION

Staff recommends that City Council approve an ordinance amending the Municipal Code to add the Section, "Public Right-of-Way Use Permit Procedures"; and that staff be directed to process requests for the Public Right-of-Way Use Permit as a Process Four. The Public Right-of-Way Use Permit Procedures will provide the City a mechanism to consider requests for these encroachments when they are to the public good. The findings which must be made for approval of the encroachment will ensure protection of abutting property owners' rights.

Staff further recommends that City Council adopt an ordinance amending the Municipal Code to remove the prohibition against granting encroachment permits for walls and fences in the public right-of-way. The current Land Development Code already provides for consideration of these encroachments. The request for these encroachments would be processed as a Process Two to ensure adequate public notice.

## ALTERNATIVES

1. Adopt the proposed ordinance for Public Right-of-Way Use Permit Procedures with the revision that the approval of the abutting property owners be obtained for proposed encroachments.
2. Adopt the proposed ordinance as a Process Two level approval, under which staff's decision is appealable to the Planning Commission.
3. Do not adopt the ordinance for Public Right-of-Way Use Permit Procedures.
4. Do not adopt the proposed ordinance for the revision to Chapter 6 of the Municipal Code.

**FISCAL IMPACT:** None.

Loveland/Christiansen/DW

**NOTE:** This activity is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15060(c)(3) (not a project). However, future applications for non-ministerial Public Right-of-Way Use Permits would be subject to environmental review.

## ADOPTION AGENDA, HEARINGS

### NOTICED HEARINGS:

ITEM-331: Scripps Gateway Freeway Center.

Matter of the appeal of Schulman, Hecht, Solberg, Robinson & Goldberg LLP, Attorneys for the Applicant Shea Homes Limited Partnership, LLC and Shea Properties, appealing a decision of denial by the Planning Commission on December 7, 2000 on an application to develop two hotels: one four story 137 room hotel and one four story 97 room hotel, one gasoline station/car wash/mini mart, one 6,000 square foot restaurant, two drive-through restaurants totaling 6,500 square feet, 4,000

square feet of retail space, surface parking, a park and ride lot, landscaping and improvements in the public right-of-way located on the northern side of Scripps Poway Parkway, east of Interstate 15 in the CC-1-3 (CA) zone of the Miramar Ranch North Community Plan area.

(99-1341 Tentative Map/Planned Commercial Development Permit/Conditional Use Permit. Miramar Ranch North Community Plan area. District-5.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolution in subitem A; and adopt the resolution in subitem B to grant the appeal, and grant the Permits; and adopt the resolution in subitem C to grant the map.

Subitem-A: (R-2001- )

Adoption of a Resolution certifying the Addendum to Environmental Impact Report 92-0466 has been completed in compliance with the California Environmental Quality Act of 1970 and State guidelines, and that said report has been reviewed and considered by the Council and adopting the Mitigation Monitoring and Reporting Program pursuant to California Public Resources Code Section 21081.

Subitem-B: (R-2001- )

Adoption of a Resolution granting or denying the appeal and granting or denying the Planned Commercial Development and Conditional Use Permit No. 99-1341, with appropriate findings to support Council action.

Subitem-C: (R-2001- )

Adoption of a Resolution granting or denying Tentative Map No. 99-1341, with appropriate findings to support Council action.

**OTHER RECOMMENDATIONS:**

Planning Commission voted 7-0 to deny; was opposition.

Ayes: None

Nays: Steele, Anderson, Brown, Butler, Skorepa, Stryker, Garcia

The Planning Commission found the project inconsistent with the Community Plan and denied the project.

The Miramar Ranch North Community Planning Group has recommended approval of this project subject to concerns. See letters of public correspondence attachments 1 and 2 to the Manager's Report.

**CITY MANAGER SUPPORTING INFORMATION:**

The Scripps Gateway Freeway Center project occupies 20.3 acres of the 242.1 acre, master planned project, Scripps Gateway, in the northwest portion of the Miramar Ranch North Community Plan area.

The proposed project would be developed on approximately 18.9 net acres of a site previously mass graded in conformance with the tentative map approved for Scripps Gateway. This site is identified as Lot 2 of Scripps Gateway Unit 3. The site is located north of Scripps Poway Parkway east of Interstate 15 in the CC-1-3 (CA) zone. Surrounding land uses include Interstate 15 to the west, open space to the north, single family and proposed industrial development to the south, and multi-family condominium development to the east. The site is subject to the terms and conditions of an existing Development Agreement, Doc. No. 00-17587 and Operating Memorandum to Development Agreement, Doc. No. 00-17587, the Scripps Gateway PCD permit 92-0466.

The Development Agreement was adopted by the City Council on August 9, 1988, amended on September 13, 1988 and September 6, 1989, between the Wuest Estates Company and the City of San Diego. The proposed project is consistent with all terms and requirements of the existing Development Agreement.

**FISCAL IMPACT:** None.

Christensen/Loveland/JSF

**LEGAL DESCRIPTION:**

The site is located on the northeast corner of the intersection of Interstate 15 and Scripps Poway Parkway and is more particularly described as a portion of the southern half of the southeast quarter of Section 20, T14S, R2W, SBM, Miramar Ranch North Community Plan area.

**ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS  
RESOLUTION:**

ITEM-332: Settlement of Personal Injury Claims of Hausting Hong.

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2001-1111)

A Resolution approved by the City Council in Closed Session on Tuesday, November 30, 1999, by the following vote: Mathis-yea; Wear-yea; Kehoe-not present; Stevens-yea; Warden-yea; Stallings-yea; McCarty-yea; Vargas-yea; Mayor-not present.

Authorizing the City Manager to pay the total sum of \$964,408.73 in the settlement of each and every claim against the City, its agents and employees, resulting from the personal injury claims of Hausting Hong (Superior Court Case No. GIC745458,



Hausting Hong, et al. v. City of San Diego, et al.);

Authorizing the City Auditor and Comptroller to issue one check in the total amount of \$964,408.73, made payable to Plaintiff Hausting Hong and his attorney of record, Thorsnes, Bartolotta, McGuire and Padilla, in full settlement of all claims.

**CITY MANAGER SUPPORTING INFORMATION:**

This constitutes the complete and final settlement of the Personal Injury Claims of Hausting Hong against the City of San Diego, its agents and employees, as a result of an incident which occurred on February 19, 1999.

Herring/Oliva/MG

Aud. Cert. 2100836.

**NOTE:** The Auditor's Certificate was not requested prior to Closed Session. The vote taken in Open Session shall be the official vote.

**NON-DOCKET ITEMS**

**ADJOURNMENT IN HONOR OF APPROPRIATE PARTIES**

**ADJOURNMENT**